

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

ISAHA CASIAS,

Plaintiff,

v.

No. 16-CV-00056 JCH/SCY

**STATE OF NEW MEXICO DEPARTMENT
OF CORRECTIONS; TARACINA MORGAN; and
HERMAN GONZALES,**

Defendants.

**DEFENDANTS STATE OF NEW MEXICO DEPARTMENT OF CORRECTIONS,
TARACINA MORGAN AND HERMAN GONZALES' ANSWER TO COMPLAINT
FOR PERSONAL INJURIES**

COME NOW defendants State of New Mexico Department of Corrections, Taracina Morgan and Herman Gonzales, by and through counsel of record, Kennedy, Moulton & Wells, P.C., by Debra J. Moulton, and hereby answer plaintiff's Complaint for Personal Injuries as follows:

JURISDICTION AND VENUE

1. This Court has proper jurisdiction of this action and venue is proper in the United States District Court.

PARTIES

2. As to paragraph 2 of the Complaint, defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and hence deny same;

3. As to paragraph 3 of the Complaint, defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and

hence deny same;

4. As to paragraph 4 of the Complaint, defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and hence deny same;

5. As to paragraph 5 of the Complaint, defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and hence deny same;

6. Paragraph 6 of the Complaint states a legal conclusion requiring no answer from defendants herein;

7. Paragraph 7 of the Complaint states a legal conclusion requiring no answer from defendants herein;

8. Paragraph 8 of the Complaint contains a legal conclusion requiring no answer from defendants herein;

9. Paragraph 9 of the Complaint contains a legal conclusion requiring no answer from defendants herein;

FACTUAL BACKGROUND

10. As to paragraph 10 of the Complaint, defendants admit the allegations contained therein;

11. As to paragraph 11 of the Complaint, defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and hence deny same;

12. As to paragraph 12 of the Complaint, defendants admit the allegation contained therein;

13. As to paragraph 13 of the Complaint, defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and hence deny same;

14. As to paragraph 14 of the Complaint, defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and hence deny same;

15. As to paragraph 15 of the Complaint, defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and hence deny same;

16. As to paragraph 16 of the Complaint, defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and hence deny same;

17. As to paragraph 17 of the Complaint, defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and hence deny same;

18. As to paragraph 18 of the Complaint, defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and hence deny same;

19. As to paragraph 19 of the Complaint, defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and hence deny same;

20. As to paragraph 20 of the Complaint, defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and hence deny same;

21. As to paragraph 21 of the Complaint, defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and hence deny same;

22. As to paragraph 22 of the Complaint, defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and hence deny same;

23. As to paragraph 23 of the Complaint, defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and hence deny same;

24. As to paragraph 24 of the Complaint, defendants the allegations contained therein;

25. As to paragraph 25 of the Complaint, defendants the allegations contained therein;

26. As to paragraph 26 of the Complaint, defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and hence deny same;

27. As to paragraph 27 of the Complaint, defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and hence deny same;

28. As to paragraph 28 of the Complaint, defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and hence deny same;

29. As to paragraph 29 of the Complaint, defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and hence deny same;

30. As to paragraph 30 of the Complaint, defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and hence deny same;

31. As to paragraph 31 of the Complaint, defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and hence deny same;

32. As to paragraph 32 of the Complaint, defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and hence deny same;

33. As to paragraph 33 of the Complaint, defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and hence deny same;

34. As to paragraph 34 of the Complaint, defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and hence deny same;

35. As to paragraph 35 of the Complaint, defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and hence deny same;

36. As to paragraph 36 of the Complaint, defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and hence deny same;

37. As to paragraph 37 of the Complaint, defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and hence deny same;

38. As to paragraph 38 of the Complaint, defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and hence deny same;

39. As to paragraph 39 of the Complaint, defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and hence deny same;

40. As to paragraph 40 of the Complaint, defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and hence deny same;

41. As to paragraph 41 of the Complaint, defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and hence deny same;

42. As to paragraph 42 of the Complaint, defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and hence deny same;

43. As to paragraph 43 of the Complaint, defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and hence deny same;

44. As to paragraph 44 of the Complaint, defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and hence deny same;

45. As to paragraph 45 of the Complaint, defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and hence deny same;

46. As to paragraph 46 of the Complaint, defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and hence deny same;

47. As to paragraph 47 of the Complaint, defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and hence deny same;

48. As to paragraph 48 of the Complaint, defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and hence deny same;

49. As to paragraph 49 of the Complaint, defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and hence deny same;

50. As to paragraph 50 of the Complaint, defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and

hence deny same;

51. As to paragraph 51 of the Complaint, defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and hence deny same;

52. As to paragraph 52 of the Complaint, defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and hence deny same;

53. As to paragraph 53 of the Complaint, defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and hence deny same;

54. As to paragraph 54 of the Complaint, defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and hence deny same;

55. As to paragraph 55 of the Complaint, defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and hence deny same;

56. As to paragraph 56 of the Complaint, defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and hence deny same;

57. As to paragraph 57 of the Complaint, defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and hence deny same;

58. As to paragraph 58 of the Complaint, defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and hence deny same;

59. As to paragraph 59 of the Complaint, defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and hence deny same;

60. As to paragraph 60 of the Complaint, defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and hence deny same;

61. As to paragraph 61 of the Complaint, defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and hence deny same;

62. As to paragraph 62 of the Complaint, defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and hence deny same;

63. As to paragraph 63 of the Complaint, defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and hence deny same;

64. As to paragraph 64 of the Complaint, defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and hence deny same;

65. As to paragraph 65 of the Complaint, defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and

hence deny same;

66. As to paragraph 66 of the Complaint, defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and hence deny same;

67. As to paragraph 67 of the Complaint, defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and hence deny same;

68. As to paragraph 68 of the Complaint, defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and hence deny same;

69. As to paragraph 69 of the Complaint, defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and hence deny same;

70. As to paragraph 70 of the Complaint, defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and hence deny same;

71. As to paragraph 71 of the Complaint, defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and hence deny same;

72. As to paragraph 72 of the Complaint, defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and hence deny same;

73. As to paragraph 73 of the Complaint, defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and hence deny same;

74. As to paragraph 74 of the Complaint, defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and hence deny same;

75. As to paragraph 75 of the Complaint, defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and hence deny same;

76. As to paragraph 76 of the Complaint, defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and hence deny same;

77. As to paragraph 77 of the Complaint, defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and hence deny same;

78. As to paragraph 78 of the Complaint, defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and hence deny same;

79. As to paragraph 79 of the Complaint, defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and hence deny same;

80. As to paragraph 80 of the Complaint, defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and

hence deny same;

81. As to paragraph 81 of the Complaint, defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and hence deny same;

82. As to paragraph 82 of the Complaint, defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and hence deny same;

83. As to paragraph 83 of the Complaint, defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and hence deny same;

84. As to paragraph 84 of the Complaint, defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and hence deny same;

85. As to paragraph 85 of the Complaint, defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and hence deny same;

86. As to paragraph 86 of the Complaint, defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and hence deny same;

87. As to paragraph 87 of the Complaint, defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and hence deny same;

88. As to paragraph 88 of the Complaint, defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and hence deny same;

89. As to paragraph 89 of the Complaint, defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and hence deny same;

90. As to paragraph 90 of the Complaint, defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and hence deny same;

91. As to paragraph 91 of the Complaint, defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and hence deny same;

92. As to paragraph 92 of the Complaint, defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and hence deny same;

93. As to paragraph 93 of the Complaint, defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and hence deny same;

94. As to paragraph 94 of the Complaint, defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and hence deny same;

95. As to paragraph 95 of the Complaint, defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and

hence deny same;

96. As to paragraph 96 of the Complaint, defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and hence deny same;

97. As to paragraph 97 of the Complaint, defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and hence deny same;

98. As to paragraph 98 of the Complaint, defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and hence deny same;

99. As to paragraph 99 of the Complaint, defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and hence deny same;

100. As to paragraph 100 of the Complaint, defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and hence deny same;

COUNT I: VIOLATION OF EIGHTH AMENDMENT RIGHT TO BE FREE
FROM CRUEL AND UNUSUAL PUNISHMENT
(Defendants Morgan and Gonzales)

101. Defendants incorporate their answers to foregoing paragraphs 1 through 100 as though fully set forth herein;

102. As to paragraph 102 of the Complaint, defendants deny the allegations contained therein;

103. As to paragraph 103 of the Complaint, defendants deny the allegations contained therein;

104. As to paragraph 104 of the Complaint, defendants deny the allegations contained therein;

105. As to paragraph 105 of the Complaint, defendants deny the allegations contained therein;

106. As to paragraph 106 of the Complaint, defendants deny the allegations contained therein;

107. As to paragraph 107 of the Complaint, defendants deny the allegations contained therein;

108. As to paragraph 108 of the Complaint, defendants deny the allegations contained therein;

109. As to paragraph 109 of the Complaint, defendants deny the allegations contained therein;

110. As to paragraph 110 of the Complaint, defendants deny the allegations contained therein;

COUNT II: NEGLIGENT MAINTENANCE OF A MOTOR VEHICLE
(Defendant DOC and defendants Morgan and Gonzales)

111. Defendants incorporate their answers to foregoing paragraphs 1 through 110 as though fully set forth herein;

112. Paragraph 112 of the Complaint states a legal conclusion requiring no answer from defendants herein;

113. Paragraph 113 of the Complaint states a legal conclusion requiring no answer from defendants herein;

114. Paragraph 114 of the Complaint states a legal conclusion requiring no answer from defendants herein;

115. Paragraph 116 of the Complaint states a legal conclusion requiring no answer from defendants herein;

116. Paragraph 116 of the Complaint states a legal conclusion requiring no answer from defendants herein;

117. Paragraph 117 of the Complaint states a legal conclusion requiring no answer from defendants herein;

118. Paragraph 118 of the Complaint states a legal conclusion requiring no answer from defendants herein;

JURY DEMAND

119. Defendants hereby demand a jury of twelve persons.

120. Any allegations not specifically admitted or denied by defendants are denied.

121. Defendants deny that plaintiff is entitled to any damages.

ALTERNATIVE DEFENSES

1. As a separate and alternative affirmative defense, defendants state that plaintiff's Complaint is barred in whole or in part by the doctrines of qualified and/or absolute immunity;

2. As a separate and alternative affirmative defense, defendants state that plaintiff's Complaint fails to state a claim upon which relief can be granted;

3. As a separate and alternative affirmative defense, defendants state that the plaintiff herein suffered no damage, injury or otherwise, as a result of defendants' acts;

4. As a separate and alternative affirmative defense, defendants state that at all times material herein they acted in good faith and in a reasonable manner given the information and circumstances existing at the time;

5. As a separate and alternative affirmative defense, defendants state that the acts and damages alleged in plaintiff's Complaint, which are specifically denied, were the proximate result of acts or omissions to act of others, thereby barring recovery herein or reducing plaintiff's recovery in proportion to the fault assessed against others;

6. As a separate and alternative affirmative defense, defendants state that plaintiff failed to exhaust his administrative remedies;

7. As a separate and alternative affirmative defense, defendants state that plaintiff's state law claims are barred, in whole or in part, to the extent plaintiff was required but failed to follow or comply with the mandatory notice provisions of the New Mexico Tort Claims Act;

8. As a separate and alternative affirmative defense, defendants state that plaintiff failed to mitigate his damages, if any;

9. As a separate and alternative affirmative defense, defendants state that they breached no duty owed to plaintiff;

10. As a separate and alternative affirmative defense, defendants state that plaintiff's state law claims are barred by the New Mexico Tort Claims Act;

11. As a separate and alternative affirmative defense, defendants state that they reserve the right to rely upon such other defenses as may become known during the course of discovery and hereby reserve the right to amend their answer to include such defenses as necessary;

Therefore, defendants respectfully request that this Court dismiss plaintiff's Complaint with prejudice and any further relief as the court deems just and proper.

Respectfully Submitted,

KENNEDY, MOULTON & WELLS, P.C.

/s/ Debra J. Moulton

DEBRA J. MOULTON

Attorneys for defendants

2201 San Pedro NE, Bldg.3, Suite 200

Albuquerque, New Mexico 87110

(505) 884-7887

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent via CM/ECF to:

Matthew E. Coyte
201 3rd St. NW, Suite 1920
Albuquerque, NM 87102
(505) 244-3030

on this 28th day of January, 2016.

/s/ Debra J. Moulton

DEBRA J. MOULTON